

New CSSF Circular for Luxembourg investment fund managers and AML requirements applicable to investment fund managers and registrar agents.

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The CSSF issued on 23 August 2018 a new circular 18/698 ("Circular") repealing CSSF Circular 12/456.

Unlike CSSF Circular 12/546 which was only applicable to UCITS management companies, the new Circular relates to the approval process and organisation of both (i) UCITS management companies subject to chapter 15 of the Luxembourg law of 17 December 2010 concerning undertakings for collective investment and (ii) alternative investment fund managers subject to chapter 2 of the Luxembourg law of 12 July 2013 concerning AIFMs (both together being referred to in the Circular as (Gestionnaires de Fonds d'Investissement, GFI, "Investment Fund Managers"). It also applies to self-managed UCITS and self-managed AIFs and also contains certain provisions regarding management companies subject to chapter 16 of the aforementioned law of 2010. Finally, in the context of combatting anti-money laundering it contains provisions which are not only applicable to Investment Fund Managers but also to registrar agents.

By means of this Circular, the CSSF confirms its most recent regulatory practice in the authorisation of Investment Fund Managers and points out that it pays special attention to the internal organisation, substance, policies and procedures of Investment Fund Managers with a specific emphasis on the need for appropriate human resources to be available to an Investment Fund Manager in consideration of the volume and nature of its activities. In that respect, the Circular specifies (i) the number of conducting officers and employees required by Investment Fund Managers, and (ii) the numbers of mandates that directors and conducting officers are authorised to have.

The latter implies that the Circular does not only have an impact on Investment Fund Managers but also affects members of the board of directors of Investment Fund Managers, UCITS, AIFs and special purpose vehicles related thereto. The number of mandates held by them and the time they dedicate thereto may, in combination with the other professional activities they pursue, not exceed the thresholds set forth in the Circular or, if such thresholds are exceeded, they must justify their time commitment to the CSSF.

The CSSF clarifies its expectations in terms of combatting money laundering and terrorist financing in relation to the investment funds, their investors, the intermediaries involved in the marketing and also in relation to the investments made on behalf of the investment funds.

The CSSF insists on the formalism to be followed by Investment Funds Managers in terms of holding management committee meetings, board of directors meetings and also discusses different reports to be drafted for the governing bodies and the CSSF, modifying at the same time the delay for filing of certain reports that were already required.

The Circular provides additional details on requirements for the due diligence and the on-going monitoring of delegates.

The CSSF aligns more closely the requirements for internal governance, control functions, operational functions and technical infrastructure applicable to Investment Fund Managers to those applicable to MiFID firms,

Although this Circular reflects the CSSF's most recent practice for authorisation of Investment Fund Managers, it reflects substantially more detailed requirements than the previous CSSF Circular 12/546 and therefore existing Investment Fund Managers will need to review their internal organisation, policies and procedures to assess their compliance with the new Circular.

The Circular does not contain any transitional provisions and is therefore immediately applicable to existing Investment Fund Managers. On this basis, existing Investment Fund Managers should immediately start assessing their compliance with the new Circular and, as the case may be, take the necessary measures to ensure compliance within a reasonable timeframe.

For further details or enquiries on the Circular, please contact Jacques Elvinger, Sophie Dupin, Céline Wilmet or Anaïs Sohler or your usual contact at the firm.

For any further information please contact us or visit our website at www.elvingerhoss.lu.

The information contained herein is not intended to be a comprehensive study or to provide legal advice and should not be treated as a substitute for specific legal advice concerning particular situations.

We undertake no responsibility to notify any change in law or practice after the date of this newsletter

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